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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,108	12/06/2001	Harry R. Layne	DT-US015146	3905

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SHINJYU GLOBAL IP COUNSELORS, LLP
1233 20TH STREET, NW, SUITE 700
WASHINGTON, DC 20036-2680

EXAMINER

YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/004,108

Applicant(s)

LAYNE ET AL.

Examiner

Winnie Yip

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ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This office action is in response to applicant's amendment filed on July 23, 2000.

The text of those sections of Title 35, U.S. Code not included in this action can be found in prior Office action.

Claim Objections

1. Claims 1 and 23 are objected to because of the following reasons: in these claims, the recited sub combination feature “said base member having a length longer than a maximum length of one of the blocks of the block wall” (claim 1, lines 5-7) and “said lintel block having a maximum height about as tall as a height of one of the blocks of the block wall” (claim 1, lines 17-18), and “is substantially equal to” (claim 23, line 2) does not appear to consist with the limitation of the body of the claim because the block wall has not been positively claimed, the block wall only functionally recited in the preamble. It is confusing whether applicant claims an embeddable lintel block it self or a combination of the lintel block in combination with the opening block wall. If claiming a sub-combination, an embeddable lintel block, all structural features of the sub-combination should be only functionally recited as relative to the block wall. For example, it should read “having a length adapted to be longer than a maximum length of one of the blocks of the block wall”. If a combination, all structural features in the combination such as the block wall must be positively claimed. Appropriate correction is required.

As better understood, claim 1 is being treated as a sub-combination on the merits.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7 and 9-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Powers, Jr. (US Patent No. 6,560,938).

Powers, Jr. shows and teaches an embeddable lintel block (10) capable to be mounted above an opening in a block wall (30'), the lintel block (10) comprising a rectangular base member (11) inherently having first and second longitudinal sides, first and second free ends (11'), said base member having a length adapted to be longer than a maximum length of the opening of the block wall such that the first and second ends being capably placed on the upper blocks (30') of the opening, said lintel block further having a first and second rectangular side members (12, 13) respectively coupled to the first and second longitudinal sides such that the base member and the first and second sides integrally form a one-piece unitary member with a substantially U-shaped cross-section, the one-piece unitary member is constructed of metal, a plurality of spacer members (55), more than four pieces, coupled between the first and second rectangular side members to form a substantially straight longitudinal passageway arranged between the first and second side member, at least one reinforcing bar (50) arranged within the longitudinal passageway to be coupled to the lintel block, wherein the lintel block (10) has a maximum height adapted to be as tall as a height of the block (35') of the block wall, and the first and second rectangular sides define the maximum depth of the lintel block. In Fig. 14,

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Powers, Jr. further teaches the rectangular base member having openings arranged at first and second ends of the lintel block to allow the concrete being filled through the lintel block into the block of the opening of the block wall.

Regard to claims 11-21, 27-31, Powers, Jr. teaches a method of forming a lintel in a block wall substantially including steps of constructing the block wall with an opening and the lintel block (10) being placed above two side blocks (30') of the opening as same as claimed.

4. Claims 1-10, 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilnau (US Patent No. 4,409,764).

Wilnau shows and teaches forming an embeddable lintel block (15) capable to be mounted above an opening in block wall, said lintel block (15) comprising: a rectangular base member inherently having first and second longitudinal sides, and first and second free ends, a first and second rectangular side members respectively coupled to the first and second longitudinal sides of the base member such that the base member and the first and second sides integrally form an one-piece unitary member with a substantially U-shaped cross-section, the one-piece unitary member is constructed of sheet metal, said lintel block having a length adapted to be longer than a maximum length of the opening of the block wall such that the first and second ends of the lintel block being capably placed on an upper blocks of the opening, the lintel block further comprising a plurality of spacer members (28), more than four pieces, coupled between the first and second rectangular side members of the U-shaped unitary member by welding or screws (see col. 4, lines 58) to form a substantially straight longitudinal passageway arranged between the first and second side member, at least one reinforcing bar (24) arranged

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within the longitudinal passageway to be coupled to the lintel block , wherein the lintel block (15) has a maximum height adapted to be as tall as a height of a block of the block wall, and the first and second rectangular sides define the maximum depth of the lintel block. In Figs.5 and 6, Wil nau further teaches the rectangular base member having openings (45 or 51) arranged at first and second ends of the lintel block to allow the concrete being filled through the lintel block into the block of the opening of the block wall.

Claim Rejections - 35 USC § 103

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powers, Jr. '938 as applied to claim 1 above, and further in view of Wil nau '764

The claim is considered to meet by Powers, Jr. as explained and applied above rejection except that Powers, Jr. does not define the spacer member being fixedly coupled to the first and second rectangular side members specifically by welding as claimed. Wil nau teaches a lintel block comprising spacer members (28), as old and known, being fixedly coupled to two side members by suitable securing means such as welding or screwing (see col. 4, line 58). It would have been an obvious matter of design choice to a person of ordinary skill in the art, at the time the invention was made, to modify the lintel block of Powers, Jr. having the spacer members being fixedly coupled to the side members of the lintel block specifically by welding as taught by Wil nau because Applicant has not disclosed that the spacer members being fixedly coupled to the side members specifically by welding solves any stated problems or it for any particular purpose and it appears that fixedly coupling two metal members together of Powers, Jr.'s lintel block would perform equally well by welding instead of screwing.

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Response to Argument

6. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Citations

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. De Zen '751 and German Patent No. 2,832,474 teach various lintel blocks having structural limitations as similar to the claimed invention.

Action Is Made Final

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip
Primary Examiner
Art Unit 3637

wsy
April 30, 2004